

Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See 86 Ill. Adm. Code 130.310. (This is a GIL).

January 28, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 5, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This office represents PERSON.

This morning PEROSN purchased two 6-packs of Ultra Slim-fast, a well-known food product containing sufficient nutrition, vitamins and minerals, when taken properly, to substitute for higher caloric food to control weight. By using store-issued coupons, she was able to purchase for @ \$5.00 this food item which would normally have cost \$12.98 at Dominick's'. She also purchased a gallon of milk for \$1.99 plus tax. The customary charge for milk at Dominick's is \$3.70; however, having shopped at this new store (Gateway) previously, PERSON was aware that today was the last day of a promotion wherein milk was sold at the reduced price.

Enclosed please find the receipt issued for these purchases. You will note that PERSON was charged \$1.19 in tax for these food items. When PERSON objected, she was informed both by the cashier and her supervisor that Slim-fast is a high-tax item. Rather than waste her time arguing with store personnel, our client went to work and later requested that we contact you to issue the appropriate refund.

Our client is not an expert at computing taxes, scanning coupons, etc., just a concerned consumer. We would appreciate your assistance in correcting this matter to our client's satisfaction.

Thank you for your courtesy and co-operation.

We are unable to write the taxpayer you refer to in your letter or refund any tax paid to your client. You may forward this letter to the retailer in question. We will refer your complaint to the

appropriate division within the Department for investigation. All overcollections of tax must either be turned over to the Department or refunded to the customer. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. See 35 ILCS 120/2. The state rate is 6.25% plus applicable local taxes for general merchandise and 1% plus applicable local taxes for items that qualify as food, drugs or medical appliances.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes.

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Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

Ultra Slim-fast is a food replacement product and as such, qualifies for the low rate of tax.

If a customer remits an amount of tax under the Retailers' Occupation Tax Act to a retailer that is not due, either as a result of a mistake of fact or an error of law, the retailer may refund the amount of tax paid and file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the retailer unless the retailer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. There is no requirement that the retailer issue the refund to the customer and file a claim for credit.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

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Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.